

Boehner joins the not-quite-a-lobbyist ranks

 by **Emma Baccellieri and Soo Rin Kim** on
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Former House Speaker John Boehner will be a strategic adviser with mega-lobbying firm Squire Patton Boggs. (AP Photo/J. Scott Applewhite, File)

Count former House Speaker [John Boehner](#) as the latest not-quite-a-lobbyist.

For nearly a decade, the number of registered lobbyists has slipped each year. This summer, the figure finally dipped below 10,000 — the lowest it's been since the Center for Responsive Politics began keeping track in 1998. And that drop in lobbyists has been accompanied by a dropoff in revenue, painting a numerical picture of an industry seemingly in pronounced decline.

But the numbers ignore the hearty portion of Washington's influence industry engaged in what's sometimes referred to as "shadow lobbying," unreported to the agencies that gather quarterly filings from those trying to bend federal policy in their clients' favor.

That's where, from all appearances, Boehner — who's barred from having lobbying contacts with his former colleagues until he's been out of office a year — could be a great fit.

Lobbying giant Squire Patton Boggs, currently the [sixth highest-earning lobbying firm](#) in the nation with over \$9 million in billings in the first half of this year, [announced](#) this week that Boehner will be joining the firm as a strategic adviser on global business development in the public sector. After representing Ohio for almost a quarter century, the last four of those as speaker, Boehner resigned from the House last October after struggling to resolve conflicts between conservative and centrist elements of his Republican party.

From riches to...less obvious riches

Lobbying was very much a growth industry in the early years of the millennium — revenue doubled from 1998 to 2007, and the number of registered lobbyists grew more than 40 percent. But 2008 brought a reversal that has only continued: The most recent count puts the number at just over 9,700, compared to the 2007 peak of more than 14,800. Revenue topped out at \$3.5 billion in 2010, while the 2015 figure was \$3.2 million. The trend line for 2016 points to another modest decrease by year's end.

What happened?

The recession and its aftermath are typically blamed, bringing tighter wallets all around. Another factor often mentioned is worsened congressional gridlock — if bills are less likely to be passed,

organizations may not invest in trying to make that happen.

But many experts insist there's not less lobbying going on. It's just that much of it is unreported.

Increased regulation is one reason. In 2007 — the year the number of registered lobbyists peaked — Congress passed the Honest Leadership and Open Government Act, which required lobbyists to disclose far more information about their work and included measures to slow the “revolving door” between government and the influence industry.

The legal definition of “lobbyist” remained the same: An individual must register if more than 20 percent of his/her working time is spent advocating to government officials; other guidelines exist around income and contacts with executive and legislative branch personnel. But with a new disclosure regime, and new sanctions for violators, some lobbyists began claiming their work did not meet the threshold and unregistered.

Until HLOGA passed, “there was no downside to being a registered lobbyist — the best practice was to err on the side of over-registration,” said Caleb Burns, a partner specializing in lobbying law at the Washington law firm Wiley Rein. “Being a lobbyist now has serious potential legal consequences.”

President [Barack Obama](#) clamped down further. In his first full day in office, Obama signed two executive orders and three presidential directives curbing the work that former lobbyists could do in his administration — including on federal advisory boards and commissions, areas previously open to those in the influence game.

The orders “had a chilling effect” on the industry, said Paul Miller, president of the National Institute for Lobbying and Ethics. “It caused people to think, ‘I’ve got to find a way around this.’”

Thus the proliferation of the shadow lobbyist. People who have unregistered in each year since 2007 include those whose jobs have changed, or those who might not have needed to register in the first place but were playing it safe. But they also include those who do their fair share of lobbying work, but classify it as something different.

A 2013 [study by OpenSecrets.org](#) found that more than 46 percent of lobbyists who were registered in 2011 but not 2012 were still with the same employer, suggesting that they were continuing to contribute to lobbying efforts while avoiding the reporting limits. Industry leaders suspect this has become increasingly common in recent years.

And some, including former lawmakers, don't have to unregister, since they never registered to begin with.

“There's a very easy way to define yourself as a strategic adviser or someone else who, quote, ‘doesn't lobby’... and get away with this,” said James Thurber, founder and former director of the Center for Congressional and Presidential Studies at American University. He cited what is frequently referred to as the Daschle loophole, named for former South Dakota Sen. [Tom Daschle](#) (D), who lost his re-election bid in 2004 and pushed through the revolving door to become a “senior policy adviser” at the law and lobbying giant Alston & Bird. After holding similar titles at several other firms and doing work that looked and sounded much like lobbying over more than a decade, Daschle recently registered as a lobbyist for the first time.

Then there are those who aren't simply traditional “walk the halls” lobbyists who deliberately maneuver around reporting thresholds, but also people taking advantage of the ways in which technology has opened up the influence industry, Miller noted. Advocating for legislation via electronic communications, think tank support, social media and survey research often overlaps significantly with old-school lobbying — and much, if not most, of that goes unreported.

“There are too many people doing this job and not registering,” Miller said.

Using a broad definition of shadow lobbying that includes the above activities, “there can be maybe twice or three times” the industry-reported 2015 revenue of \$3.2 billion, Thurber said.

Boehner won't be the only former lawmaker at Squire Patton Boggs, whose [extensive client list](#) includes firms ranging from Airbus and Amazon to Wake Forest University and Walton Enterprises: Former Senate Majority Leader [Trent Lott](#) (R-Miss.) and former Sen. [John Breau](#)x (D-La.) have been there since 2005 and 2010, respectively; they are both registered lobbyists. Boehner's former top advisors [David Schnittger and Natasha Hammond](#) are there, as well, as “senior policy advisers.”

Boehner's new employment was announced just days after tobacco giant Reynolds American announced he'd be [joining its board](#).

Patton Boggs, which was among the top three earners in the industry every year from 1998 until its 2014 merger with Squire Sanders, has long been a [K Street revolving door hub](#), boasting a big concentration of former occupants of congressional office buildings. And it's no surprise to see that firm or others snatch up newly available former lawmakers, who can command the highest billing rates when clients ask for their help. Of the 75 House members and senators who left the Hill at the end of the 113th Congress, at least [48.8 percent](#) went to work for lobbying firms.

What's ahead

Many are trying to anticipate how the next president will interact with the industry — particularly whether or not she/he will keep Obama's restrictions, and how much their repeal might actually matter. Obama has issued waivers to allow certain former lobbyists to take positions, so it's not as though the revolving door was slammed shut.

A new president trying to staff an administration from a limited pool of qualified individuals might not want to deal with the restrictions, which have unquestionably complicated the process. The head of the nonprofit helping the presidential transition process has [urged Obama to rescind the provisions](#) himself to remove the burden from his successor.

[Donald Trump](#)'s views on the issue remain muddy, although some of his campaign staffers, like Paul Manafort, his campaign chairman, certainly have worked in the influence industry. But there has been "a decent amount of speculation" in the lobbying world that a Clinton presidency would bring a repeal, Burns said. Clinton, after all, is staffed by people with strong connections to the industry — such as her campaign chair, John Podesta, who helped found one of Washington's top lobbying firms. His brother, Tony, still is chairman of the Podesta Group and has bundled funds for Clinton.

Still, even if the next administration proves kinder to lobbyists, it's not necessarily likely that many will come out of the shadows, said Wright Andrews, a lawyer-lobbyist of nearly four decades who is best known for representing the subprime mortgage industry in the early 2000s.

"That's the way the game is played, unfortunately," Andrews said.

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